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# Alliance for Public Technology

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April 13, 1998

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Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Re: Comments of the Alliance for Public Technology  
Supporting Immediate Implementation of Section  
706 of the Telecommunications Act of 1996 In the  
Matter of Petition of the Alliance for Public  
Technology Requesting Issuance of Notice of  
Inquiry and Notice of Proposed Rulemaking to  
Implement Section 706 of the 1996  
Telecommunications Act; RM-~~9844~~ 9244

Dear Ms. Salas:

Please find enclosed an original and four copies of the  
above-referenced submission. Please do not hesitate to call me at  
(202) 408-0831 if you have any questions. Thank you for your  
assistance.

Sincerely,

Maureen A. Lewis  
General Counsel

Enclosures

\*Organization is for identification  
purposes only.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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APR 13 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Petition of the Alliance for Public Technology )  
Requesting Issuance of Notice of Inquiry and )  
Notice of Proposed Rulemaking to Implement )  
Section 706 of the 1996 Telecommunications Act )

RM-9844 9244

**COMMENTS OF THE ALLIANCE FOR PUBLIC TECHNOLOGY  
SUPPORTING IMMEDIATE IMPLEMENTATION OF SECTION 706 OF THE  
TELECOMMUNICATIONS ACT OF 1996**

Normally we would not file comments on our own petition at this time, but rather would await the opportunity afforded for reply comments. We file now, however, to address further one point -- the FCC's legal authority to adopt the policy options set forth in the Alliance for Public Technology's filing of February 18, 1998 (APT Petition). In this way, others will have an opportunity to address in their reply comments the points we make below.

We have set forth our legal analysis (APT Pet. at 17-19), which describes how Section 706, with its reference to forbearance, must be given meaning as to advanced capabilities, with Section 251(c) of the Telecommunications Act of 1996 (the Act) remaining applicable to the existing network. We, of course, adhere to that analysis. But in any event -- even assuming that the powerful directive of Section 706 did not exist -- the Commission, in the Notice of Proposed Rulemaking (NPRM) that APT seeks, would

have full legal authority to act upon our proposals under Section 251(c) and the public interest standard of the Act.

As noted in our petition (APT Pet. at n.3), the issue of the unbundled elements (UNE) and their availability as a bundled "platform" (UNE platform) is now before the Supreme Court, and we, therefore, have proceeded here on the basis of the Commission's present position regarding that platform. What we are raising now is the policy issue of whether, consistent with the Act, the Act's purpose (see APT Pet. at n.5), and the public interest standard, the UNE platform should extend to advanced capabilities, or be limited to the existing ILEC network. The Commission surely has the power, in an appropriate rulemaking proceeding, to adopt the policy modification here urged. It is the Commission's responsibility to balance the contending considerations -- the CLECs' need for such future advanced capabilities against providing incentives for the ILECs to initiate such capabilities to residences,<sup>1</sup> in order to distinguish their networks from those of resellers (including those using the UNE platform) and to meet the broadband competition now presented by cable companies.

In a paper delivered by Dr. Joseph Farrell, then Chief Economist of the FCC, he stated (at 46) that "...Section 251(d)(2) tells the Commission, in choosing what network elements should be unbundled, to consider, at a minimum, whether unbundled access to 'proprietary' network elements is 'necessary,' and whether failure to 'provide access' would impair competitors' ability to provide service... there seems to be scope, as there

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<sup>1</sup> We have pointed out that this is a win-win situation, since the CLEC is also given an incentive to take the "dry copper" (the local loop which must remain available to the CLEC on parity terms), and provide the electronics needed to provide advanced capabilities such as ADSL. See APT Pet. at 16-17.

ought to be, to consider the competitive implications of requiring or not requiring unbundling."<sup>2</sup> That is precisely what APT is requesting the FCC to do in the proposed rulemaking -- to consider whether competition and the public interest are better served by requiring or not requiring unbundling of advanced capabilities not yet in existence. We submit that for the reasons set forth in our petition, the balance should be struck in favor of not unbundling.

The above analysis is equally applicable to the second proposal of the APT petition -- to phase out the UNE/TELRIC regime over a reasonable time period, especially with regard to elements like the switch (since large CLECs like AT&T and MCI can readily acquire switches from many vendors and co-locate them, actually or virtually). See APT Pet. at 19-21. We will not repeat here the public interest gains from such an approach. If the Commission agrees with our analysis, it clearly has the authority to act along those lines, after determining in the rulemaking proceeding an appropriate time period (or periods) to apply to particular elements.

We note in this respect that similar approaches may be brought to the Commission's attention. For example, just last week New York Public Service Commission Chairman John O'Mara and Assistant Attorney General for Antitrust Joel Klein expressed support for an agreement under which Bell Atlantic would offer UNE platforms to serve residential customers. The platform requirement would "sunset" after four years in the New York metropolitan area and after six years in other areas of the state (*Telecommunications Reports*, April 13, 1998 at 19).

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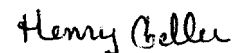
<sup>2</sup> "Competition, Innovation and Deregulation," March, 1997 at p. 46.

Finally, there is no question concerning the legal authority of the FCC to proceed on the other proposals in the petition. Rather, the issues are again ones of policy, not of legal authority. Therefore, APT asks the Commission to grant our petition and commence a rulemaking proceeding and an inquiry as quickly as possible to avoid further delay in implementing Section 706.

Respectfully submitted,



Maureen A. Lewis  
General Counsel



Henry Geller  
Of Counsel

Alliance for Public Technology  
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April 13, 1998

I, Ginger Beverly, a secretary for Alliance for Public Technology, hereby certify that on the 13th day of April, 1998, copies of the foregoing " Comments of the Alliance for Public Technology Supporting Immediate Implementation of Section 706 of the Telecommunications Act of 1996" In the Matter of Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act; RM-9844 were hand delivered to:

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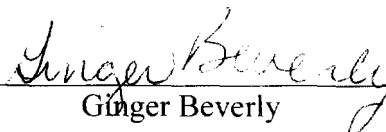
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